

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

EAGLE LAKE FARMS PARTNERSHIP,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

BAYER CROPSCIENCE LP, BAYER  
CROPSCIENCE INC., et al.

Defendants.

Case No. 0:21-cv-00543

**DECLARATION OF KEITH R. ABRAMS**

I, KEITH R. ABRAMS, hereby declare as follows:

1. I am over the age 21 and if called as a witness I could and would testify competently to the matters set forth in this declaration.

2. I am an Assistant Secretary of Bayer CropScience LP. In my position, I am familiar with the business and functions of Bayer CropScience LP, Bayer CropScience Inc., and their relationships with other related entities. All of the statements in this Declaration are, unless otherwise indicated, based upon my personal knowledge, review of corporate and business records, and/or information provided by appropriately knowledgeable persons. I am informed and believe that the statements contained herein are true and correct.

**Defendant Bayer CropScience LP**

3. Bayer CropScience LP is a limited partnership formed in Delaware and has its principal place of business in St. Louis County, Missouri.

4. Bayer CropScience LP is the primary agricultural business entity for Bayer AG in the United States, and is engaged in the business of producing, distributing, and selling agricultural

biotechnology, seeds, agricultural chemicals, and other agricultural products.

5. Bayer CropScience LP and/or its affiliates have developed germplasm, which is the living tissue from which new plants can be grown, i.e., seed.

6. Bayer CropScience LP and/or its affiliates have also developed biotechnology, in the form of plant “traits,” that involves genetic modification of seeds to make them resistant to certain herbicides and/or pests.

7. Other manufacturers have developed crop protection inputs that are specifically designed for use with biotechnology developed by Bayer CropScience LP and/or its affiliates. For example, Engenia is a dicamba herbicide manufactured by BASF Corp. and/or its affiliates designed for use with the Bayer CropScience Xtend® trait.

**Defendant Bayer CropScience Inc.**

8. Bayer CropScience Inc. is a New York corporation with its principal place of business in St. Louis County, Missouri.

9. Bayer CropScience Inc. is not engaged in any commercial business.

10. Bayer CropScience Inc. does not hold any patented biotechnologies.

11. Bayer CropScience Inc. does not manufacture, distribute, or sell seeds, chemistry, or other crop inputs.

**Relationship Between Bayer CropScience LP and Bayer CropScience Inc.**

12. Bayer CropScience LP is a legally and factually separate legal entity, distinct from its partners, direct and indirect parent entities, direct and indirect subsidiaries and other related entities.

13. Bayer CropScience Inc. is a legally and factually separate legal entity, distinct from its stockholder, direct and indirect parent entities, direct and indirect subsidiaries and other related

entities.

14. Bayer CropScience LP and Bayer CropScience Inc. are related through their ultimate common ownership by their indirect parent, Bayer AG.

15. Bayer CropScience LP and Bayer CropScience Inc. are both corporate affiliates of Monsanto Company.

16. Monsanto Company has contributed assets of its commercial facing agricultural organization to Bayer CropScience LP.

17. Monsanto Company and Bayer CropScience Inc. are both limited partners in Bayer CropScience LP.

**Technology / Stewardship Agreements**

18. Bayer CropScience LP and/or its affiliates protect germplasm they develop, among other ways, with Plant Variety Protection Act certificates and patents issued by the United States Patent and Trademark Office.

19. Bayer CropScience LP and/or its affiliates protect seed biotechnology they develop, among other ways, with patents issued by the United States Patent and Trademark Office.

20. Bayer CropScience LP and/or its affiliates allow end-users to purchase and plant seed containing their patented germplasm and/or their patented biotechnology (collectively, “Monsanto/Bayer CropScience Technology”) only if the end-users first obtain a limited use license.

21. The limited use license to purchase and plant seed containing Monsanto/Bayer CropScience Technology is contained in what is commonly referred as a Technology/Stewardship Agreement, or TSA.

22. Bayer CropScience LP produces, markets, and distributes seeds – which incorporate a

combination of germplasm and selected traits developed by it and/or its affiliates – to farmers under brand names belonging to Bayer CropScience LP and/or its affiliates; Bayer CropScience LP and/or its affiliates also license both the germplasm and traits to other unaffiliated seed producers who use them in their own seed, which they then distribute or sell. With respect to the traits, other unaffiliated seed producers, pursuant to the terms of license agreements, may insert Monsanto/Bayer CropScience Technology into their own germplasm, and then sell their own branded seed to growers.

23. A limited use license, or TSA, is mandatory for a farmer's purchase of any seed containing Monsanto/Bayer CropScience Technology, regardless whether the seed is a Bayer CropScience brand or another brand, and regardless of who the seed is purchased from.

24. Bayer CropScience LP and/or its affiliates require licenses with third-party manufacturers-producers and/or their affiliates to allow them to use Monsanto/Bayer CropScience Technology in their own seed. A standard condition of these licenses is that the licensee must confirm before sale that any end-user has entered into a TSA with Bayer CropScience LP and/or its affiliates and has a corresponding license number.

25. Bayer CropScience LP and/or its affiliates require licenses with distributors and/or their affiliates to allow them to sell Bayer CropScience brand seed to end-users and/or retailers. A standard condition of these licenses is that the distributor must confirm before resale that any end-user has entered into a TSA with Bayer CropScience LP and/or its affiliates and has a corresponding license number. Another standard condition of these licenses is that the distributor sell only to retailers who independently have contracts in place with Bayer CropScience LP and/or its affiliates.

26. Bayer CropScience LP and/or its affiliates require licenses with retailers to allow them to

sell Bayer CropScience brand seed to end-users. A standard condition of these licenses is that the retailer must confirm before sale that any end-user has entered into a TSA with Bayer CropScience LP and/or its affiliates and has a corresponding license number.

27. The epicenter of Bayer CropScience LP's distribution and license network, including its management of contracts with other manufacturers, wholesalers, and retailers, is in St. Louis County, Missouri.

28. Limited use licenses, i.e., TSAs, to purchase and plant seed containing Monsanto/Bayer CropScience Technology are presently entered into with Bayer CropScience LP.

29. Prior to 2021, TSAs were entered into with Monsanto Company. From 2019 forward, TSAs described Monsanto Company as either a subsidiary of Bayer AG or a member of the Bayer Group.

30. In 2020, Monsanto Company contributed the TSAs entered into by Monsanto Company to Bayer CropScience LP.

#### **Plaintiff's TSA**

31. On or about February 17, 2011, Mr. Kenny Falwell and Plaintiff Eagle Lake Farms Partnership entered into a TSA with Monsanto Company. Mr. Falwell was thereafter issued a license number allowing him and Eagle Lake Farms Partnership to purchase seed containing Monsanto/Bayer CropScience Technology. A true and accurate copy of this TSA is attached hereto as Attachment 1.

32. The TSA permits Monsanto Company to change its terms and includes a process for noticing Mr. Falwell of the changes. *E.g.*, Att. 1, ¶ 8. Monsanto Company provided Mr. Falwell annual updates of changes to the TSA.

33. For instance, in 2020, Monsanto Company and/or Bayer Crop Science LP sent Mr. Falwell